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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. GINA ELIZABETH HUBBARD, Defendant and Appellant.	C085620 (Super. Ct. Nos. 13F6066, 16F3752)

Following a negotiated plea agreement, defendant Gina Elizabeth Hubbard was convicted of possessing methamphetamine and found in violation of a previously imposed probation. Pursuant to the terms of her plea agreement, defendant was sentenced to a split sentence of seven years eight months. On appeal, defendant contends the trial court erred in denying her motion to suppress evidence. She further contends her prior conviction for transporting methamphetamine was void and thus the sentence imposed in this matter is unlawful. She claims in the alternative that she received

ineffective assistance of counsel because her trial counsel failed to challenge the prior conviction and erroneously advised her to admit violating her probation.

As to her search claim, we conclude there was no error. We conclude the remaining claims are not cognizable on appeal given defendant's failure to obtain a certificate of probable cause; defendant's redress, if any, is by a petition for writ of habeas corpus. (*People v. Richardson* (2007) 156 Cal.App.4th 574, 597.)

BACKGROUND

In October 2013, in Shasta County Superior Court case No. 13F6066 (case No. 066), defendant pleaded guilty to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)),[1] with the allegation she was transporting for purposes of sale stricken from the information, and admitted to a prior narcotics conviction (§ 11370.2, subd. (c)). The trial court suspended imposition of sentence and placed defendant on three years' formal probation.

On May 12, 2016, Shasta County Sheriff's Deputy Gregory Ketel stopped defendant while she was driving a motorcycle on Highway 44 in Shasta County. Defendant told Deputy Ketel she was on searchable probation. Deputy Ketel searched defendant and found .069 grams of methamphetamine and a methamphetamine pipe in her pocket. He also found multiple bags of methamphetamine (one weighing .83 grams and the rest weighing a combined total of approximately 13 grams) and another glass pipe in her backpack, as well as bottles of alcohol in the motorcycle's "saddle bags."

In Shasta County Superior Court case No. 16F3752 (case No. 752), the People charged defendant with possession of methamphetamine for sale (§ 11378) and transportation of methamphetamine (§ 11379, subd. (a)). To both charges, the People appended allegations that defendant was previously convicted of possession for sale and

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[1] Undesignated statutory references are to the Health and Safety Code.

possession for sale or transportation (§ 11370.2). The People further alleged defendant was ineligible for probation as a result of these prior convictions.

Defendant moved to suppress evidence pursuant to Penal Code section 1538.5. According to Deputy Ketel's testimony at the hearing on her motion, on May 12, 2016, at approximately 8:00 p.m., he was on routine patrol in Shasta County. He was driving on Highway 44 and came upon two cars trailing behind defendant, who was driving a motorcycle. Defendant was driving approximately 15 miles per hour below the posted speed limit of 65 miles per hour. In addition to the two cars ahead of Deputy Ketel and directly behind defendant, two other cars were behind Deputy Ketel. The lighting at that time was "good" and the road "pretty straight." Based on his experience and training, these factors led Deputy Ketel to suspect defendant was under the influence of drugs or alcohol. He continued behind the two vehicles and defendant for approximately two miles.

When defendant exited Highway 44, Deputy Ketel followed. He then activated his overhead lights to initiate a vehicle stop. Defendant pulled over; she told Deputy Ketel she was on searchable probation, and he found the illegal narcotics.

Defendant negotiated a plea agreement to resolve both pending cases. In case No. 752, defendant pleaded no contest to possession of a controlled substance and admitted to one prior narcotics conviction; she agreed to serve eight months for the possession conviction and three years for the sentencing enhancement. Defendant also admitted to violating her probation in case No. 066 and agreed to serve four years for that conviction. In sum, defendant agreed to a split sentence totaling seven years eight months: one year in county jail and six years eight months on mandatory supervision. The court sentenced defendant in accordance with the terms of her plea agreement.

DISCUSSION

A. Motion to Suppress

Defendant moved to suppress all evidence seized as a result of the traffic stop initiated by Deputy Ketel and now contends the trial court erred in denying her motion. She argues the traffic stop was unreasonable under the Fourth Amendment to the United States Constitution and therefore all evidence seized as a result of that stop should have been suppressed. We conclude there was no error.

"[A] police officer can legally stop a motorist *only* if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 926.) The " 'possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal -- to "enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges." ' " (*People v. Leyba* (1981) 29 Cal.3d 591, 599.)

"When discussing how reviewing courts should make reasonable-suspicion determinations, [the United States Supreme Court has] repeatedly said they must look at the 'totality of the circumstances' of each case to see whether the officer has 'a particularized and objective basis' for suspecting legal wrongdoing." (*United States v. Arvizu* (2002) 534 U.S. 266, 273 [151 L.Ed.2d 740].)

We review the court's denial of defendant's suppression motion under the following well-established standard: "We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362; accord,

People v. Leyba, supra, 29 Cal.3d at pp. 596-597, *People v. Lawler* (1973) 9 Cal.3d 156, 160.)

Here, Deputy Ketel stopped defendant's vehicle because she was driving 15 miles per hour under the posted speed limit, on a relatively straight road that was well-lit. She continued at that slow speed for two miles, with at least five cars trailing behind her, including Deputy Ketel. Based on his training and experience, driving slowly without any obvious explanation, Deputy Ketel suspected defendant may have been driving under the influence of drugs or alcohol. This was a reasonable conclusion. (See *People v. Gibson* (1963) 220 Cal.App.2d 15, 20 [that a driver proceeds at a speed slower than the speed limit under circumstances where he might normally proceed at the higher speed is a factor that justifies an officer's investigation].)

We find no error.

B. Defendant's Prior Conviction for Transportation—Case No. 066

Defendant contends her conviction for transportation of methamphetamine in case No. 066 is void following the 2013 amendments to section 11379, which clarified that transporting methamphetamine for personal use was not a crime. (See Assem. Conc. Sen. Amends. to Assem. Bill No. 721 (2013-2014 Reg. Sess.) as amended June 27, 2013.)[2] Accordingly, she contends, the agreed-upon sentence is unauthorized.

As a general rule, a criminal defendant who enters a guilty or no contest plea with an agreed-upon sentence may challenge that sentence on appeal only if he or she first

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[2] " 'AB 721 would clarify the Legislature's intent to only apply felony drug transportation charges to individuals involved in drug trafficking or sales. Currently, an ambiguity in state law allows prosecutors to charge drug users – who are not in any way involved in drug trafficking – with TWO crimes for simply being in possession of drugs. . . . [P]rosecutors are using this wide interpretation to prosecute individuals who are in possession of drugs for only personal use, and who are not in any way involved in a drug trafficking enterprise. [¶] This bill makes it expressly clear that a person charged with this felony must be in possession of drugs with the intent to sell. . . .' "

obtains a certificate of probable cause from the trial court. (Pen. Code, § 1237.5; *People v. Panizzon* (1996) 13 Cal.4th 68, 76, 78 (*Panizzon*).) The purpose of the certificate requirement is to "discourage and weed out frivolous or vexatious appeals" (*Panizzon*, at p. 75) following a defendant's voluntary entry into a plea in exchange for specified benefits such as the dismissal of other counts or an agreed-upon sentence (*id.* at p. 80). (See *People v. Johnson* (2009) 47 Cal.4th 668, 676.) The certificate of probable cause requirement is aimed at claims that operate "*in substance* [as] a challenge to the validity of the plea." (*Panizzon*, at p. 76.)

In determining whether a guilty plea appeal requires a certificate of probable cause, " 'the crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made.' " (*Panizzon, supra*, 13 Cal.4th at p. 76.) Where the defendant challenges the stipulated sentence imposed, he or she is attacking the validity of the plea which requires a certificate of probable cause. (*Id*. at p. 78; see *People v. Johnson, supra*, 47 Cal.4th at p. 678 ["a certificate of probable cause is required if the challenge goes to an aspect of the sentence to which the defendant agreed as an integral part of a plea agreement"].) The certificate requirement is to be "applied in a strict manner." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1098.)

Here, defendant was required to obtain a certificate of probable cause because she challenges the stipulated sentence imposed as part of her plea agreement. This is properly viewed as a challenge to the validity of the plea itself, requiring a certificate of probable cause. (*Panizzon, supra*, 13 Cal.4th at pp. 73, 78-79 [claim that imposition of sentence to which defendant agreed pursuant to plea agreement constituted cruel and unusual punishment was a challenge to the validity of the plea itself, requiring a certificate of probable cause]; *People v. Vargas* (2007) 148 Cal.App.4th 644, 651-652 ["if the defendant agreed to a specific sentence as part of his plea agreement the sentence is an issue that arose before entry of the guilty plea, and in order to challenge that sentence on appeal, the defendant must obtain a certificate of probable cause"].)

Defendant alternatively claims that because her conviction in case No. 066 is void, her trial counsel was ineffective for failing to challenge that conviction, as well as advising her to admit violating her probation in case No. 066. These claims also fail because she does not obtain a certificate of probable cause. Each of these claims challenge conduct that occurred prior to the plea. Accordingly, we are without power to address defendant's ineffective assistance of counsel claim in the absence of a certificate of probable cause. (See *Panizzon, supra*, 13 Cal.4th at p. 74.) Defendant must pursue any such claim through a petition for writ of habeas corpus.

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

MAURO, J.

RENNER, J.